

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.**

FCC Seeks Comment Regarding)	
Possible Revision or Elimination of)	CB Docket No. 06-208
Rules Under the Regulatory)	
Flexibility Act, 5 U.S.C. 610)	

COMMENTS OF THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

The Public Service Commission of the State of Missouri (“MoPSC”) offers the following comments in response to the Federal Communication Commission’s (“Commission”) Public Notice which published a plan for reviewing rules adopted in calendar year 1996. The objective of the review is to determine whether certain rules should be continued without change, amended or rescinded to minimize any significant economic impact on a substantial number of small entities, consistent with the requirements of 5 U.S.C. section 610.

As a general matter, the MoPSC recommends the Commission delete or update all rules referencing expired deadlines for action. For instance, 47 C.F.R. 52.23(c) requires the deployment of a long-term database method for number portability beginning January 1, 1999. At a minimum, the reference to 1999 should be removed from the rule, leaving the requirement as “six months after a telecommunications carrier receives a specific request for number portability”. As another example, 47 C.F.R. 64.604(c)(5)(III) states

that effective July 26, 1993, telecommunications relay services (“TRS”) shall be administered by an entity selected by the Commission and that entity, for an interim period, will be the National Exchange Carrier Association Inc. At a minimum, this rule should be updated to remove its interim applicability.

More specifically, the MoPSC provides comment on the continued applicability of Part 51 – Interconnection; Part 52 – Numbering; Part 64, Subpart F – Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities;

Part 51 – Interconnection

The Commission is reviewing Part 51 of its rules, which were promulgated to implement sections 251 and 252 of the Communications Act of 1934, as amended. In its public notice, the Commission provides a brief description of, the need for and the legal basis for the various rule sections. In discussing Part 51, the Commission states the rules were intended to foster competition in the local exchange and exchange access markets. Since the Commission is completing its review to determine any significant economic impact on small entities, the MoPSC submits that there is a continued need for the provisions of Part 51, especially as to the relevancy of those rules to small entities.

The MoPSC recently conducted a rulemaking proceeding to implement its delegated authority for number conservation efforts throughout Missouri. In this proceeding, the rural incumbent local exchange carriers (“rural

LECs”) -- those carriers in Missouri that would qualify as small entities under 5 U.S.C. section 610 -- filed comments expressing concerns about complying with number conservation rules prior to the presence of competitive local exchange carriers in their service areas.¹ In addition, the MoPSC, within the past year, completed its first arbitration cases involving rural LECs. Both examples demonstrate that competition is, at best, in its infancy in rural LEC territories. It is premature to rescind rules designed to foster competition and implement 47 U.S.C. 251 and 252 when carriers, by their own admission, indicate competition is lacking in many areas.

Part 52 – Numbering

According to the public notice, the Part 52 rules being reviewed provide a framework for ensuring fair and impartial access to numbering resources in the United States and ensure that users of telecommunications services can retain, at the same location, their existing telephone numbers when they switch local service providers. Further, the rules are designed to “encourage a competitive telecommunications market”.² As noted above, the MoPSC recently completed a rulemaking process implementing its delegated numbering authority. As part of the rulemaking process, the MoPSC explored the extent to which number pooling requirements should be

¹ Comments of the Missouri Independent Telephone Group and Comments of the Missouri Small Telephone Company Group. *In the Matter of a Proposed Rulemaking to Create Chapter 37-Number Pooling and Number Conservation Efforts*. TX-2007-0086.

² Public Notice. *FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under the Regulatory Flexibility Act, 5 U.S.C. 610*. CB Docket No. 06-208. Page 16.

extended to rural LECs that have not received a bona fide request for local number portability (“LNP”). The MoPSC Staff requested information from rural LECs on LNP capabilities. Thirty-two of the thirty-seven rural LECs responding to the request indicated their switches had the hardware capability to provide LNP. Of those carriers with the hardware capability, twenty-three switches also had the software capability to provide LNP. The fiscal impact of requiring rural LECs to implement partial LNP to allow thousands-block number pooling was estimated at \$408,000 for first-year compliance and \$1.2 million for years two through five of the MoPSC rule.

The Commission has previously addressed issues related to rural LECs incurring costs absent receipt of a bona fide request from a competitor. The Commission also mandated intermodal LNP³, but the rules associated with that mandate were remanded back to the Commission to complete the regulatory flexibility analysis. Until such time that the Commission determines it is not cost prohibitive for small LECs to participate in LNP and number conservation efforts or until such time as competition is present in small LEC areas, it is premature to consider rescinding Part 52 numbering rules.

The MoPSC would like to take this opportunity to encourage the Commission to modify existing numbering rules, specifically but perhaps not

³Memorandum Opinion and Order and Further Notice of Proposed Rulemaking. *In the Matter of Telephone Number Portability and CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*. CC Docket No. 95-116.

exclusively 47 C.F.R 52.15, to expand its direct and delegated authority to include monitoring and reporting of numbers assigned to “intermediate” carriers. Many of the numbering resources are being expended by non-incumbent and often non-certificated providers (e.g. wireless providers, Voice over Internet Protocol service providers, paging companies, dating services, etc.). The Commission and state commissions have no authority over these numbers other than to recognize them as “assigned”. When such numbers are being “assigned” in blocks to intermediate carriers, additional reporting and monitoring should be required to ensure proper conservation of the “assigned” numbers.

Part 64, Subpart F – Telecommunications Relay Service and Related Customer Premises Equipment for Persons with Disabilities

Part 64, subpart F implements section 225 of the Communications Act of 1934, as amended, which requires that the Commission ensure that telecommunications relay services are available “to the extent possible and in the most efficient manner” to individuals with a hearing or speech disability. According to the “needs” section of the public notice, the rules are designed to ensure that individuals with hearing or speech disabilities receive the same quality of service regardless of where the call originates or terminates. The Commission seeks comment on the continued applicability of:

- 47 C.F.R. 64.604(a)(2) - Operational Standards, Confidentiality and Conversation Content;
- 47 C.F.R. 64.604(c)(5)(ii) - Jurisdictional separation of costs, Cost Recovery;

47 C.F.R. 64.604(c)(5)(iii) - Jurisdictional separation of costs, TRS Fund.

The MoPSC has previously filed comments on TRS-related issues and would like to take this opportunity to reiterate concerns related to 47 C.F.R. 64.604(a) and 47 C.F.R. 64.404(c)(5)(ii) and (iii).

47 C.F. R. 64.604(a)(2)

- (i) except as authorized by section 705 of the Communications Act, 47 U.S.C. 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. STS CAs may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user. The caller may request the STS CAs to retain such information, or the CA may ask the caller if he wants the CA to repeat the same information during subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls.
- (ii) CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay user specifically requests summarization, or if the user requests interpretation of an ASL call. An STS CA may facilitate the call of an STS user with a speech disability so long as the CA does not interfere with the independence of the user, the user maintains control of the conversation, and the user does not object. Appropriate measures must be taken by relay providers to ensure that confidentiality of VRS users is maintained.

TRS has been criticized recently as a means of fostering obscene, vile or fraudulent activity because Communications Assistants (“CAs”) are

required to transmit or repeat calls, no matter the content. A recently aired NBC News investigation⁴ claimed that TRS may be helping the criminal community more than the deaf community because of serious flaws in the relay system. During this investigation, former AT&T and MCI operators Cathy Audia and Sheila Satterwhite said the system was being exploited by thieves. According to Ms. Audia, "eighty-five to [ninety] percent" of the calls she handled were scams. Ms Audia added, "The majority of them, very rarely did we get an actually hearing-impaired call".

The Commission raised this same concern in a May 8, 2006, Further Notice of Proposed Rulemaking ("FNPRM") "address[ing] the misuse of the two Internet-based forms of telecommunications relay service (TRS), Internet Protocol Relay Service (IPR) and Video Relay Service (VRS)".⁵ In its FNPRM, the Commission sought comment on whether certain TRS rules should be waived to permit IP Relay providers to screen and, where appropriate, terminate calls the providers determine are not legitimate TRS calls. In its reply comments, the MoPSC noted that relay providers such as Sprint Nextel Corporation, AT&T, Inc. and Sorenson Communications, Inc. already have procedures in place to handle IP Relay misuse and fraud. The comments provided by the industry suggested solutions put forth in the FNPRM may

⁴ See: <http://www.msnbc.msn.com/id/15937817/>

⁵ *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities and Misuse of Internet Protocol (IP) Relay Service And Video Relay Service. CG Docket No. 03-123.*

not be effective, may be intrusive or may be inconsistent with the intent of the Americans with Disabilities Act. The MoPSC suggested the Commission direct the Relay industry to further explore this issue and develop minimum standards to be reviewed and approved by the Commission.

The MoPSC renews its position in this request for comment and encourages the Commission to continue efforts to strengthen its rules in an effort to reduce and eliminate fraudulent relay activity.

47 C.F.R 64.604(c)(5)(ii) and (iii)

This section of the rule addresses TRS cost recovery issues and mandates that all costs caused by interstate TRS be recovered from all subscribers for every interstate service. The Commission, in several arenas, has implied its intention to shift TRS costs from the interstate jurisdiction to intrastate funds. In previous comments, the MoPSC has stated that the Commission must be cognizant of individual state circumstances and regulations prior to shifting cost recovery from the Interstate Relay Fund to the Missouri Relay Fund. For instance, in order to compensate the Missouri Relay Fund for additional costs, the MoPSC would, at a minimum, have to reevaluate current Missouri end user surcharges. The MoPSC is limited in its review of the Missouri Relay Fund by Section 209.259.1 RSMo which states:

From the date of implementing the deaf relay service and equipment distribution fund surcharge, the commission **shall review such surcharge no less frequently than every two years but no more than annually** and shall order changes in the amount of the surcharge as necessary to assure available funds

for the provision of the programs established in section 209.253.
(emphasis added)

Included with the concern of shifting interstate TRS costs to intrastate funds is a concern of shifting costs related to video relay services (VRS) and other Internet-enabled, IP Relay calls to intrastate funds. Missouri statutes do not require Internet service providers to become certificated as telecommunications providers. Therefore, Internet traffic is largely unregulated or subject to interstate jurisdiction. If the Commission determines that some portion of costs related to VRS or IP Relay calls should be recovered as intrastate, the MoPSC questions the ease and validity of tracking and validating such calls for jurisdictional separation and compensation purposes. The MoPSC encourages the Commission to maintain existing TRS jurisdictional compensation regimes.

Conclusion

In summary, with respect to the continued applicability of Part 51 – Interconnection and Part 52 – Numbering, the MoPSC encourages the Commission to maintain existing rules until competition replaces the need for regulation in rural LEC areas. The MoPSC encourages the Commission to modify Part 52 – Numbering rules to ensure appropriate conservation methods are employed when numbers are assigned to intermediate carriers. The MoPSC continues to urge the Commission to review its TRS rules for modifications necessary to reduce and prevent fraudulent activity. Finally,

the MoPSC urges the Commission to be cognizant of consequences associated with shifting interstate relay costs to state jurisdictions.

Respectfully submitted,

/s/ Natelle Dietrich

Natelle Dietrich
Regulatory Economist

/s/ David A. Meyer

David A. Meyer, Esq.
Senior Counsel
Missouri Bar #46620
Missouri Public Service

Commission

P. O. Box 360
Jefferson City, MO 65102
(573) 751-8706 (Telephone)
(573) 751-9285 (Fax)